

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANNA MARIA DREKE,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 1:14-CV-3051-JTR

ORDER GRANTING PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
ATTORNEY FEES PURSUANT TO
42 U.S.C. § 406(b)

BEFORE THE COURT is Thomas Bothwell's motion to reconsider this Court's order denying, with leave to renew, his request for attorney fees pursuant to 42 U.S.C. § 406(b). ECF No. 29. Plaintiff is represented by Thomas Bothwell. Defendant is represented by Special Assistant United States Attorney Leisa A. Wolf.

On December 19, 2014, the Court granted Plaintiff's motion for summary judgment and remanded the matter to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). ECF No. 18. Judgment was entered for Plaintiff. ECF No. 19. On March 16, 2015, Plaintiff's counsel requested and was awarded Equal Access to Justice Act (EAJA) fees in the total amount of \$4,694.48. ECF No. 23. Plaintiff was subsequently awarded retroactive benefits in the amount of \$30,067.00, ECF No. 24-2, and the Social Security Administration paid Mr. Bothwell \$6,000.00 as Section 406(a) fees. *See* ECF No. 24 at 1. Mr. Bothwell now requests Section 406(b) fees in the sum of \$1,516.75.

1 On July 26, 2016, the Court denied, with leave to renew, Plaintiff's motion
2 for Section 406(b) fees, given the numbers provided by counsel did not result is a
3 favorable calculation. ECF No. 28. Mr. Bothwell's instant motion for
4 reconsideration again requests Section 406(b) fees in the amount of \$1,516.75.
5 ECF No. 29. The request for Section 406(b) fees and motion for reconsideration
6 are uncontested. ECF No. 27, 30.

7 Counsel may receive both Section 406(a) fees and Section 406(b) fees.
8 Awards under Section 406(b) are limited to 25% of a plaintiff's past-due benefits.
9 Combined fees awarded under Section 406(a) and Section 406(b) are not limited to
10 25% of past due benefits, *Clark v. Astrue*, 529 F.3d 1211, 1218 (9th Cir. 2008).

11 Section 406(b) fees are offset by any EAJA fees previously received. Mr.
12 Bothwell's initial motion for 406(b) fees and current motion for reconsideration
13 only request Section 406(b) fees in the sum of \$1,516.75, \$6,000.00 less than 25%
14 of Plaintiff's past-due benefits.

15 25% of Plaintiff's past-due benefits (\$30,067.00) is \$7,516.75. Given the
16 numbers provided by Mr. Bothwell, the Court **construes** the instant motion as
17 seeking Section 406(b) fees in the amount of \$6,211.23. This figure is less than
18 25% of Plaintiff's past-due benefits (\$7,516.75), and, when offset by the \$4,694.48
19 EAJA fees previously received by counsel, would result in a total Section 406(b)
20 award of \$1,516.75.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. Plaintiff's motion for reconsideration, **ECF No. 29**, is **GRANTED**.
23 Plaintiff's request for attorney fees pursuant to 42 U.S.C. § 406(b) is **GRANTED**.

24 2. After an offset for EAJA fees previously received by Plaintiff's
25 counsel (\$4,694.48), the Social Security Administration shall release to Plaintiff's
26 counsel, Mr. Thomas Bothwell, Section 406(b) attorney fees in the amount of
27 **\$1,516.75**. Any additional funds withheld by the Social Security Administration
28 for the payment of attorney fees shall be released to Plaintiff Anna Maria Dreke.

1 **IT IS SO ORDERED.** The District Court Executive is directed to file this
2 Order, provide a copy to counsel for Plaintiff and Defendant, and **CLOSE THE**
3 **FILE.**

4 DATED September 7, 2016.

A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE